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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. [redacted] 15

WAIALUA AGRICULTURAL COMPANY, LIMITED, an Hawaiian corporation,
Petitioner,

vs.

ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. VON HOLT, her guardian, JAMES L. HOLT and ANNIE HOLT KENTWELL,
Respondents.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit and Supporting Brief.

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Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

To the Honorable, the Supreme Court of the United States:

Waialua Agricultural Company, Limited,[1] prays that a Writ of Certiorari issue to review the decree

(1) Referred to herein as "Waialua."

(R. 1628) of the United States Circuit Court of Appeals for the Ninth Circuit made in the above-entitled cause on December 9, 1937, which reverses the decree of the Supreme Court of Hawaii entered March 25, 1935 (R. 631).

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This suit is for the cancellation of a deed and lease of land in the Hawaiian Islands upon the ground of the mental incompetence of the grantor and lessor. The facts are fully set forth in the opinions of the courts below and may be summarized as follows:

The lease was executed in 1905 for a 25-year term. The deed (which covered a contingent interest in the same property) was executed in 1910. Suit to cancel the deed was filed in 1928, and by later amendment in 1932 (two years after the lease had expired), the lease was sought to be cancelled. (R. 874, 953)

The lessor and grantor, Eliza R. P. Christian, was born in the Hawaiian Islands and lived there until 1906, when she went to Oxford, England, where she has since resided. She was first placed under guardianship in 1926, in England, at the age of 41 years. Suit was filed two years later; more than 18 years after the deed was made. (R. 844, 847)

Mrs. Christian has never appeared in court in any of these proceedings. Although found to be a congenital imbecile, the trial court held that she "neither was, nor is, an idiot, a lunatic or utterly imbecile. She was and is, however, a person of undeveloped intellect (R. 132)

* * * mentally incompetent to execute a conveyance * * *" (R. 133). She attended school for years, married, was accepted as a competent party to a series of business transactions extending over a period of years and moved freely about the world. (R. 211, 221, 232, 241, 265)

Mrs. Christian's interest in the property at the time of her lease and her deed (her father and other relatives joined in the execution of both of these as to their interests) was contingent; dependent upon her surviving her father and being his sole heir. The contingency vested in 1922 when her father died. (R. 953)

The property in question (referred to in the opinions as the Holt lands) is a one-third interest in 14,000 acres of land on the Island of Oahu. As shown by the attached map, it forms a wedge in the center of Waialua's unified plantation, and comprises 28% of its entire area. When the 1905 lease was delivered the land was a barren waste, but following the lease it was cleared, and water was developed on it and surrounding lands at great cost. Waialua spent $630,722.12 in improvements on the property, and $504,652.94 off it, but in connection with it, in reliance on the validity of the instruments. (R. 557, 1507, 1515)

These improvements were constructed for the operation of the plantation as a unit. They consist of railroads, telephone lines, electric plant, roads, bridges, irrigation ditches, reservoirs, dams, spillways, elaborate pumps and syphons, and many buildings, all located and constructed without reference to the boun-

daries of the part of the plantation here involved, but solely with a view to their utility to serve the whole plantation. (R. 578, 1494 to 1505)

Suit was commenced in the Circuit Court of the First Circuit of the Territory of Hawaii[1] in 1928 to cancel the deed. Some eighteen persons who might otherwise have testified, including those who acted for Waialua in the transaction, and the public officials who participated in the execution of the challenged instruments, had died. (R. 977)

After trial, cancellation of the deed was decreed and a judgment for $540,806.07 for rents was entered. On appeal, the Supreme Court of Hawaii affirmed the cancellation of the deed but reversed the judgment for rental on the ground that even though the deed was cancelled, Waialua was entitled to hold possession by virtue of the lease of 1905.

The cause was remanded to the trial court where the complaint was amended to attack the lease (the term had already expired) and after trial, the lease was cancelled and the trial court entered judgment for $606,785.79 in rents. The Supreme Court of Hawaii on May 3, 1934 reversed the decree cancelling the lease, upon the ground that the lease was beneficial to Mrs. Christian and her incompetence (if she was incompetent in 1905) had not been a factor in the transaction.

Both parties appealed to the Circuit Court of Appeals for the Ninth Circuit which on December 9,

(1) The Circuit Court of the First Circuit is hereinafter referred to as the "trial court."

1937 reversed the decree of the Supreme Court of Hawaii, held the deed void and remanded the cause to the lower courts to determine whether Mrs. Christian was incompetent when the lease was made in 1905, and if so, to cancel the lease and fix the rental damages. It also decreed the return of the purchase price of $30,000 with interest, and directed that an allowance be made for the cost of improvements on the land, not exceeding the increase in value attributable thereto.

The decree of the Circuit Court of Appeals determines all of the questions of law and leaves to the lower courts only the determination of subordinate questions of fact. These determinations will be unnecessary, if our view of the law is sustained, and a judgment here favorable to petitioner will finally dispose of the entire cause.

The following facts are established by the decisions below:

Mrs. Christian was incompetent in 1910 when the deed was made. (R. 1592)

Waialua had no knowledge of the incompetence and paid an adequate consideration. (R. 304, 1605)

The contingency vested in 1922, when Mrs. Christian's father died. (R. 1590)

The 1905 lease was for an adequate consideration and highly desirable to the lessor. (R. 558, 560)

Waialua has incorporated the land into its unified plantation and has expended more than $1,-

000,000 in improvements on and off the land in reliance on the validity of the instruments. (R. 578, 1493, 1507, 1515)

The land has increased greatly in value. (R. 294)

In 1910 Waialua purchased a contingent remainder in 14,000 acres of partially cultivated land. The decree requires it to surrender in 1938 a vested fee in an integral part of its plantation, greatly increased in value, and improved by the expenditure of more than $1,000,000.

OPINIONS BELOW.

The opinions of the courts below are found in the following pages of the record:

Opinions of the trial court (unreported):

First Opinion dated May 11, 1929 (R. 111).

Opinion on Remand, dated August 18, 1932 (R. 472).

Opinions of the Supreme Court of Hawaii:

First Opinion dated April 18, 1931 (R. 202, 31 Haw. 817).

Second Opinion dated May 3, 1934 (R. 547, 33 Haw. 34).

Opinions of the Circuit Court of Appeals:

Opinions dated December 9, 1937 (R. 1586, 93 Fed.(2d) 603).

Opinion denying Rehearing dated February 1, 1938 (R. 1633, not reported).

JURISDICTION.

The decision of the Circuit Court of Appeals was rendered on December 8, 1937. A petition for rehearing was seasonably filed on January 7, 1938, which after consideration was denied on February 1, 1938. The mandate has been stayed pending the filing and disposition by this Court of this petition (R. 1639).

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (USCA, Title 28, Section 347).

THIS COURT MAY NOW FINALLY DISPOSE OF ENTIRE CAUSE.

While we realize that this Court is ordinarily reluctant to review an interlocutory decree, we point out that for all practical purposes this is a final decree, for it settles all questions of law, leaving only subordinate questions of fact for decision. This cause has been in the courts for years. If this writ is granted, and the questions of law are determined as we contend, a final decree may now be entered, and no further proceedings will be necessary in any court. A writ may issue in such circumstances.

United States v. Gulf Refining Company, 268 U. S. 542, 545;

Stringfellow v. Atlantic Coast Line R. Co., 290 U. S. 322;

Clark v. Willard, 292 U. S. 112;

Prudence Company, Inc. v. Fidelity and Deposit Company of Maryland, 297 U. S. 198.

QUESTIONS PRESENTED.

The questions here may be summarized as follows:

1. Is the deed of an incompetent (before adjudication) to an innocent purchaser for an adequate consideration void, as the Circuit Court of Appeals has held?

2. Should such a deed made in 1910, conveying a contingent interest, be now set aside (as the Circuit Court of Appeals has held) after the contingency has vested, and after more than $1,000,000 has been spent in improvements on the faith of its validity, upon a mere showing of incompetence, and upon the return of the purchase price plus an allowance of the cost of improvements on the land not exceeding their enhancement of its value?

3. Will a lease made in 1905, to an innocent lessee, for an adequate rental, which expired in 1930, be now set aside (as the Circuit Court of Appeals has held), upon a mere showing of incompetence, where the lease was beneficial, and large sums were expended upon improvements in the belief that it was valid?

4. Finally, what is the law regarding the deed of an incompetent to an innocent purchaser for an adequate consideration:

   (a) Is the deed void, and will it be set aside upon the return of the consideration and an allowance for enhanced value from improvements,

without weighing all of equities, as was declared by the Circuit Court of Appeals;[1] or

(b) Is the deed voidable, and will it stand in the absence of any showing of inequitable circumstances or advantage taken of the incompetent as declared by Story, Williston, and Pomeroy, in accord with the weight of authority and the Common Law?

(c) Is status quo restored by a return of the consideration plus the cost of improvements on the land not exceeding their enhancement of its value (as was decided by the Circuit Court of Appeals), where a contingency has vested, the property has increased in value, and the purchaser has irredeemably changed its position?

REASONS FOR ALLOWANCE OF WRIT.

This cause involves the question of whether the deed of a mental incompetent (before adjudication) to a bona fide purchaser is void or merely voidable, and the principles which shall govern a court of equity in a suit to cancel such a deed.

The overwhelming weight of authority is that such a deed is voidable only. Yet the court below has held

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(1) The Circuit Court of Appeals declared: "This as will appear does not mean that the court should balance all equities of the parties as was done by the trial court." (R. 1600.)

such a deed to be void. This decision not only is contrary to authority and principle, but adds confusion to the already existing confusion in the Federal courts as to the correct rule.

This confusion arises largely from a statement of this Court in *Dexter v. Hall*, 15 Wall. 9, 20, that

> "The fundamental idea of a contract is that it requires the assent of two minds. But a lunatic or person non compos mentis, has nothing which the law recognizes as a mind, and it would seem therefore, upon principle, that he cannot make a contract which may have any efficacy as such."

In that case this Court held that a power of attorney executed by a lunatic is "void", and while under the facts there presented the result was doubtless correct, for the principal at the time was confined in an asylum, the court's expression has been interpreted by many Federal courts[1] as a declaration that the deed of an incompetent to an innocent purchaser is "void" to such an extent that many of the courts have characterized it as "Federal" rule to be applied in all Federal courts, irrespective of the law of the situs of the land. It is referred to in encyclopedias and some text books as the "Federal" rule.[2]

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(1) *Plaster v. Rigney*, 97 Fed. 12;
Edwards v. Davenport, 20 Fed. 756;
Anglo Californian Bank v. Ames, 27 Fed. 727;
Clark Car Co. v. Clark, 11 Fed.(2d) 814;
White's Guardian v. Martin, 2 Alaska 495.

(2) 1 *Federal Law of Contracts*, Sec. 336.7 (1934 Edition).

And in this cause the grantor not only contended that there was a "Federal" rule but also that the court below was bound to follow that rule.[1] (R. 1627)

The court below in declaring the deed of an incompetent void, cited *Dexter v. Hall* as authority for its declaration "We hold that contracts made by an incompetent are void because an incompetent is incapable of giving the required assent thereto. *Dexter v. Hall,* supra, * * *." (R. 1597)

Sothern v. United States, 12 F.(2d) 936, 937 summarized the law on this subject as follows:

> "* * * the courts of the United States have uniformly held a contract of a lunatic or an insane person is wholly void and subject to collateral attack. The leading case on that subject is Dexter v. Hall * * *."

The inaccuracy of this statement and the existence of a direct conflict in the Federal courts, is illustrated in *Kevan v. John Hancock Life Insurance Company,* 3 Fed. Supp. 288, 289, 290, where District Judge Otis declared:

> "I do not find a single federal appellate court decision announcing the rule that contracts generally, entered into by insane persons, not adjudicated insane, are absolutely void."
>
> "My view of the matter is that it cannot be said that a Supreme Court dictum and five scat-

(1). The grantor's Brief had a topic heading as follows: "Eliza was incompetent and the rule of the Federal Courts is that the contract of an incompetent person is void and a nullity * * *."

tered District Court opinions, established any such federal rule as plaintiff contends for.

"The overwhelming weight of authority in this country in the state courts is that the contracts of insane persons who have not been adjudged insane, are voidable only."

Notwithstanding the confusion that exists in the Federal decisions, the overwhelming weight of general authority, and we submit the better view, is that the deed of an incompetent, before adjudication, is voidable and not void. That is the law in the great majority of states, it is the common law, it is the law of England, and it is the law as announced by text writers and commentators such as Williston, Story, Chitty, Pollock and Pomeroy.

And we submit such is the law as declared by this Court, and this view has been taken by some lower Federal courts.(1) In *Luhrs v. Hancock*, 181 U. S. 567, 574, this Court declared, "The deed of an insane person is not absolutely void: it is only voidable; that is, it may be confirmed or set aside."

That there is confusion and conflict among the Federal courts on this question, cannot be denied, and for this reason alone the writ should be granted. It will permit this Court to declare its view with finality and end the misinterpretation and misapplication of its earlier decisions.

The reasons for granting this writ may be summarized as follows:

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(1) *Beale v. Gibaud*, 15 Fed. Supp. 1020;
Kevan v. John Hancock Ins. Co., 3 Fed. Supp. 288;
Safe Deposit Co. v. Tait, 54 Fed.(2) 383;
Levine v. Whitney, 9 Fed. Supp. 161.

1. The court below, in holding the deed of an incompetent void as against an innocent purchaser who paid an adequate consideration, has decided an important question of general law contrary to the great weight of authority.

2. The court below, in holding the deed of an incompetent void, has impressed upon the Territory of Hawaii an intolerable rule of property law which, unless corrected by this Court in the exercise of its supervisory powers, will render uncertain and unstable titles to real property generally in the Territory of Hawaii and elsewhere within the jurisdiction of that court.

3. The court below, in holding the deed of an incompetent void, did so upon a misunderstanding of two decisions of this Court, to-wit:

Dexter v. Hall, 15 Wall. 9;

Luhrs v. Hancock, 181 U. S. 567,

and in direct conflict with the pronouncement of this Court in the case last cited.

4. The court below has laid down a palpably erroneous principle of equity to the effect that in a bill in equity for cancellation of a deed upon the ground of incompetence of the grantor, it is error for the trial court to balance the equities of the parties.

5. The correct rule of law to be applied to deeds of incompetents is of great importance to the public generally; the determination of the rule by this Court will be an important contribution to the jurisprudence of this country, and end the confusion and conflict which presently exists in the Federal Courts.

WHEREFORE, petitioner prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and to send to this Court for its review and determination, a full and complete transcript of the record and of the proceedings of said court had in the case numbered and entitled in its docket as "No. 8329, Eliza R. P. Christian, an incompetent person, Appellant, v. Waialua Agricultural Company, Limited, and others,(1) Appellees; Waialua Agricultural Company, Limited, Cross-appellant vs. Eliza R. P. Christian, an incompetent person, and others,(1) Cross-appellees," and that the decree of said court be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated: San Francisco, California,
March 25, 1938.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
By HERMAN PHLEGER,
MAURICE E. HARRISON,
J. GARNER ANTHONY,
Counsel for Petitioner.

ROBERTSON, CASTLE & ANTHONY,
BROBECK, PHLEGER & HARRISON,
EVAN HAYNES,
Of Counsel.

---

(1) James L. Holt and Annie Holt Kentwell, whose names appear in the title of the cause, were made parties in the trial court, but a severance was obtained in the Supreme Court of Hawaii (R. 804), and they were not parties to the appeal to the Circuit Court of Appeals.

In the Supreme Court of the United States

OCTOBER TERM, 1937

No.....

WAIALUA AGRICULTURAL COMPANY, LIMITED, an Hawaiian corporation,
Petitioner,

vs.

ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. VON HOLT, her guardian, JAMES L. HOLT and ANNIE HOLT KENTWELL,
Respondents.

Brief in Support of Petition for Writ of Certiorari.

The Petition contains a statement of the grounds of jurisdiction, a statement of the case and references to the opinions of the court below.

ERRORS TO BE URGED.

The Circuit Court of Appeals erred in:

1. Holding the deed of 1910 void; and the lease of 1905 and the assignment of 1906 void, if the grantor was then incompetent.

2. Holding that Waialua can be restored to status quo; and that it is restored to status quo by a return of the purchase price plus an allowance for improvements.

3. Giving no consideration to the fact that Waialua purchased a contingent interest, and that the contingency did not occur until 12 years later; or to the fact that costly improvements were made off the land for its benefit, and on the land for the benefit of other lands.

4. Holding that the equities of the parties should not be balanced, and in refusing to balance such equities.

5. Holding that Mrs. Christian is entitled to recover the rental value of the land for the period, or any part thereof, of Waialua's occupation.

ONE VITAL ERROR CORRUPTS THE WHOLE JUDGMENT OF THE COURT BELOW.

When the court below held the deed to be "void", it approached the question of cancellation, not as a case where it was asked to divest a title held and acted on for many years, but on the contrary, simply as a suit to obtain a judicial declaration of an existing fact.

i. e. that the deed is void. The grantor being incompetent, says the court, her deed was void; the grantee, however innocent, has never had the title, and the grantor has never ceased to have it. The only possible question, therefore, arises (in the Court's view) out of the fortuitous circumstance that the grantor comes into equity, which may impose terms, or even perhaps refuse to act at all, leaving her to her remedies at law. (R. 1598)

It is this view of the case, this idea that the court is asked, not to take the title from the grantee and give it to the grantor, but merely to declare a pre-existing fact, which explains (although it does not justify) the following declarations of the court below:

1. That the incompetent grantor has a right to this judicial declaration of her uninterrupted ownership, "even though the bargain may seem fair" (R. 1600), i.e., even though her only reason for bringing the suit is the desire to profit by increase in value of the land, from whatever cause, in the intervening years. (R. 1600)

2. That the usual rule, that equity never effects an unjust result is inapplicable here: that in cases like this, it is not true that "the court should balance all equities". (R. 1600)

3. That in cases such as this (although the grantee may, as here, be irreparably harmed by the undoing of what was done fairly and in good faith many years before) "It is no legal hardship on the party dealing with an incompetent if he

receives back what he gave in the bargain." (R. 1603)

4. That the only account that need be taken of the grantee's changes of position in reliance on its title, is to give it quasi-contractual relief, in so far as its physical improvements "on another's land" have permanently enriched the "true owner". (R. 1617)

5. That (although the court announced that status quo should be restored), the grantor is entitled to the relief sought, however much this may injure the grantee; however fatally and inextricably the land in question may have become entangled in the grantee's other property and affairs; so long as the grantor is willing to return the purchase price and pay the grantor the present value of the physical improvements.

In other words, incompetent grantors are given an absolute option, after the lapse of no matter how many years, to elect to get back the land conveyed, for the price at which it was originally sold, plus the value of permanent additions.

Thus the court enables incompetents (or their relatives who stand to profit), to lie in wait, and whenever changed conditions make it profitable, to repudiate their deeds and contracts, even though it inflicts irreparable harm on wholly blameless persons.

And so the court here has decreed that Waialua, in 1938, surrender to Mrs. Christian a vested fee in an integral part of its plantation, greatly increased in

value, and improved by the expenditure of more than $1,000,000; when all it received in 1910, when it made the purchase, was a contingent interest in partially cultivated land.

REASONING AND DECISION OF THE CIRCUIT COURT OF APPEALS.

The following summary analysis of the decision of the court below, omits subsidiary questions and certain other matters which, having been decided, are no longer important.

After observing that the authorities are conflicting, the court says:

> "We hold that contracts made by an incompetent are void because an incompetent is incapable of giving the required assent thereto. Dexter v. Hall, supra, 20 * * *;" (R. 1597)

It then declares that even though this is true,

> "Equity does not always grant relief against a void contract. For instance a gambling contract is void (6 R. C. L. 775, §180), but the loser is granted no relief when he asks rescission and restitution of the property lost." (R. 1598)

The court then holds that even though a contract of an incompetent is fair, for an adequate consideration, and made without knowledge of incompetence, the incompetent party still has the option of repudiating it at will:

> "Even though the bargain may seem fair, the incompetent usually has special reasons in asking

for relief. The courts should not be concerned with his reason, but, after proof of incompetency, with the status of the parties, as shown hereinafter by the various factual situations. This, as will appear, does not mean that the court should balance all equities of the parties, as was done by the trial court." (R. 1600)[1]

The court then mentions the rule of the English courts, and some others, that "if the party dealing with the incompetent dealt in good faith, without overreaching and without notice, then relief is refused even though the status quo may be restored," but rejects this view and holds that:

"* * * if the parties can be placed in statu quo, the relief will be granted. (citations) It is no legal hardship on the party dealing with the incompetent if he receives back what he gave in the bargain." (R. 1603)

The court then says: "We apply these rules to the facts;" and turns to the question of relief against the deed. It first summarizes the facts found:

"Both courts found that appellant was incompetent to execute the deed; that the company had no notice of the incompetency; that the company could be placed in statu quo; and that appellant was not guilty of laches. These conclusions

(1) This startling statement on an equity appeal is the logical result of the court's initial error in holding the deed "void". Literally read, it is a declaration that Waialua is not entitled to its day in a court of equity. It is the court's reason for refusing to consider Waialua's irrevocable changes of position.

were reached after careful consideration of the evidence. Exhaustive opinions were written considering the evidence. We accept them because we can not say there was clear error, since the evidence at most was only conflicting." (R. 1605)

It then holds that the deed was properly cancelled, under the rule stated by it, because status quo was restored simply by returning the purchase price:

"In accordance with the rules above stated, and considering the company as an innocent party without notice, relief was properly given, we believe, because the status quo of the company may be and was restored by the decree by setting off the $30,000.00 purchase price, which the company paid, together with interest, against the accrued rentals to which the ward was entitled." (R. 1606)

The court then turns to relief against the lease, and adopts the facts as found by the Hawaiian court:

"It found that the company had no knowledge of the incompetency; that the consideration for the lease was adequate; that the bargain was fair and reasonable; that 'there was no fraud, actual or constructive.'" (R. 1608)

On this basis the Supreme Court of Hawaii had concluded that—

"This lease was for an adequate consideration. All its terms were fair and reasonable * * * It has been fully performed. It was in the best interests of Eliza and beneficial to her * * * The imbecility of the lessor did not enter into the transaction.

> Under these circumstances we can see no equity or justice in canceling the lease (R. 558) * * * even though the lessee can be restored to the status quo ante." (R. 560)

For this reason, the Hawaiian court held that it was unnecessary to decide whether Mrs. Christian was incompetent in 1905. The court below, however, (i.e., the Circuit Court of Appeals), holds that notwithstanding the facts found, if Mrs. Christian was incompetent at the time of the lease, she has the right to repudiate it now. (Its term expired in 1930.) It held therefore that there must be a determination of the question whether Mrs. Christian was incompetent when she executed the lease. (R. 1609)

The court then deals with the question of improvements, and notes that—

> "* * * the court below decreed that the ward convey certain lands upon which improvements existed, to the company absolutely, and permanent rights of way over other lands upon which existed other improvements; and that the company assure certain rights of way to the ward." (R. 1616)

The court disapproves of this ruling, holding that the applicable rule is that where one innocently places improvements "on another's land", he is, in some cases, entitled to relief, but relief is limited to the "enhanced value of the land caused solely by the improvements," (R. 1618) not in excess of their cost. No consideration is given to improvements made off the land for its benefit, or to improvements on the land, so far as they were made for the benefit of other lands.

Opinion on Denial of Rehearing.

The opinion denying rehearing seeks to explain several matters contained in the main opinion.

The court says that it had not reached its conclusion that the deed of an incompetent is void on the theory that a contract is a "meeting of the minds," but because "one without a mind cannot have an intention".[1] (R. 1635)

It reiterates (R. 1635) the court's earlier statement that status quo should be restored, but does nothing to change the fact that it did not even attempt to restore the status quo, beyond giving the grantee compensation for benefits conferred on the grantor. It makes clear that all the court means by "status quo" is a return of the purchase price saying:

> "We used the term 'status quo' in the sense that it meant restoration of what was received under the contract." (R. 1635)

ut adds that if it includes "both the consideration eceived and allowance for improvements," (R. 1636) hen in effect the requirement is still satisfied. The ourt still fails to realize that by refusing to give any eight to changes of position by Waialua which do ot benefit the grantor, but which nevertheless have

(1) As previously pointed out, Mrs. Christian is no natic. She had executed over the years, a number conveyances, and had been accepted without question a party to various transactions by persons whose nesty and credibility are established. (R. 221, 232, 241, , 275, 276) None of these transactions (except those in stion here) in so far as the record shows, have ever n challenged. (R. 221, 232, 241, 265)

been made or suffered by Waialua in reliance on its title, it has inflicted a grave injustice on Waialua, which is not, and cannot be, restored to status quo.

POINT I.

THE RULE THAT THE CONTRACTS OF INCOMPETENTS ARE AT MOST VOIDABLE, IS NOW ALMOST UNIVERSALLY ACCEPTED.

The tendency of the modern authorities is to go much farther in sustaining the contracts of incompetents than is required to sustain the transactions here involved.

1. The proper rule is that contracts of incompetents are valid if made in good faith and for adequate consideration.

This is the law in England,[1] and is now the settled rule in several states. We submit that it is the correct view, and is decisive of this case.

Imperial Loan Company v. Stone, L. R. (1892) 1 Q. B. 599:

"A contract made by a person of unsound mind is not voidable at that person's option if the other party to the contract believed at the

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(1) Sec. 1 of the Hawaiian General Laws provides "The common law of England, as ascertained by English and American decisions, is declared to be the common law of the Territory of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the Territory, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; * * *" Rev. Laws of Hawaii 1935, p. 73.

time he made the contract that the person with whom he was dealing was of sound mind. In order to avoid a fair contract on the ground of insanity, the mental incapacity of the one must be known to the other of the contracting parties. A defendant who seeks to avoid a contract on the ground of his insanity, must plead and prove, not merely his incapacity, but also the plaintiff's knowledge of that fact, and unless he proves these two things he cannot succeed."

See also

Molton v. Camroux, (1848) 2 Ex. 487; 4 Ex. 17.
Goldberg v. McCord, 251 N. Y. 28:

"An insane person, before office found, may convey a good title; his deed is not void, but voidable (Finch v. Goldstein, 245 N. Y. 300, 157 N. E. 146); and it is not even voidable as against bona fide purchaser for value without notice of the incompetency."

In upholding the deed of a lunatic to an innocent purchaser the court said in *Ashcraft v. De. Armond,* 44 Ia. 229, 234:

"We are at loss to understand why his title should be held invalid. Not knowing that Elizabeth was wanting in mental capacity and having innocently taken her conveyance, it surely cannot be said that as to him there were any further equities of which her possession would serve to give him notice or put him on inquiry."

In *West v. Seaboard Air Line Ry.,* 151 N. C. 231, the court said:

"The well-established rule is that the mere fact that one of the parties to the contract is of un-

sound mind (he not having been found to be a lunatic by judicial proceedings) does not render the contract void, but at most only voidable, and is no ground for setting it aside where the other party had no notice of the insanity and derived no inequitable advantage from it."

See also:

Rhoades v. Fuller, 139 Mo. 179;
Beals v. See, 10 Pa. St. 56;
Rubins v. Hamnett, 294 Pa. 295;
Eaton v. Eaton, 37 N. J. Law, 108;
Mattheissen v. McMann, 38 N. J. Law, 536;
Young v. Stevens, 48 N. H. 133.

And see also the treatises cited next below.

2. In any event, it is now almost universally agreed that executed contracts of incompetents will not be set aside if made in good faith unless status quo can be restored.

There is no doubt of the proposition stated in the heading. Professor Williston speaks on the question in part as follows:

"According to the view more commonly expressed a lunatic's transactions are voidable * * * In the leading case of Molton v. Camroux, the rule was stated: 'The modern cases show that when that state of mind was unknown to the other contracting party, and no advantage was taken of the lunatic, the defense cannot prevail, especially where the contract is not merely executory but executed in the whole or in part and the parties cannot be restored altogether to their original positions.' * * *

"In the United States, the weight of authority supports the rule quoted above from Molton v. Camroux. This principle applies to the case of a deed made by a lunatic."

1 *Williston on Contracts* (Rev. Ed.) Secs. 251, 254.

See also:

Anson on Contracts (5th Am. Ed.), p. 203;
Pollock on Contracts (10th Ed., 1936), p. 191;
Harriman on Contracts (2d Ed.), Sec. 407;
1 Story's Equity Jurisprudence (13th Ed.), pp. 241, 242;
32 *Corpus Juris* 730;
21 Halsbury's Laws of England (2d Ed., 1936), p. 282.

A discussion of the cases would unnecessarily encumber this brief. We quote from a note in 46 A. L. R. 419 (supplemented in 95 A. L. R. 1143):

"The great weight of authority supports the rule that where a contract with an insane person has been entered into in good faith, without fraud or imposition, for a fair consideration, without notice of the infirmity, and before an adjudication of insanity, and has been executed in whole or in part, it will not be set aside unless the parties can be restored to their original position."

3. The doctrine that a contract requires a meeting of the minds is no obstacle to the rule that contracts of incompetents are voidable and not void.

The old notion that contracts and conveyances made by incompetents are wholly void, is based, of course,

on the metaphysical idea that a contract requires a meeting of the minds, and that since an incompetent has no mind he cannot, therefore, make a contract (*Dexter v. Hall,* 15 Wall. 9). This is the view taken by the court below, and is the foundation of its decision.

The short answer to this proposition is stated by Professor Williston. He observes that the modern rule (that incompetents' contracts are voidable at most, and valid if fair), is:

> "* * * in line with the view now generally prevailing in regard to mutual assent as a requirement for the formation of contracts. According to the modern view actual mental assent is not material in the formation of contracts, the important thing being what each party is justified in believing from the actions and words of the man he is dealing with. Accordingly, if one dealing with a lunatic may reasonably suppose he is sane and makes a bargain with him on that assumption, there is no theoretical difficulty in the lack of mutual assent. Lunatics whose acts can deceive anybody are not so totally devoid of will that their words and acts can be compared to talking while asleep or signing a paper substituted by sleight of hand." (1 *Williston on Contracts (Rev. Ed.)* §254)

The objective theory of contracts is adopted in the *Restatement,* and specifically stated to be applicable to contracts of insane persons.

Restatement of the Law, Contracts, Sec. 20:

"A manifestation of mutual assent by the parties to an informal contract is essential to its

formation and the acts by which such assent is manifested must be done with the intent to do those acts; but, except as qualified by §§55, 71 and 72, neither mental assent to the promises in the contract nor real or apparent intent that the promises shall be legally binding is essential.

"*Comment*:

"a. * * * Nor is it essential that the parties are conscious of the legal relations which their words or acts give rise to. It is essential, however, that the acts manifesting assent shall be done intentionally. That is, there must be a conscious will to do those acts; but it is not material what induces the will. Even insane persons may so act; but a somnambulist could not." (pp. 25, 26)

See also:

Williston, op. cit., Secs. 20, 21, 22;

Holland, Jurisprudence (12th Ed.), pp. 119-120;

Langdell, Summary of the Law of Contracts (2d Ed.), Sec. 180;

Holmes, The Common Law, pp. 309, 324, 325.

POINT II.

RESTORING A PARTY TO STATUS QUO MEANS SAVING HIM HARMLESS.

We need not labor the proposition that the rule forbidding cancellation of executed conveyances to blameless grantees does not mean merely that the consideration must be restored (as held here), nor merely that, plus the value of physical structures. It

means that such grantees must be substantially "reinstated in the condition in which they were prior to the purchase". (*Yauger v. Skinner,* 14 N. J. Eq. 389)

Even in cases of rescission for fraud, the same rule is applied, with appropriate exceptions, because inherent in the idea of rescission. (*Neblett v. Macfarland,* 92 U. S. 101)

And as against defendants who are without fault, the rule is unqualified, that executed transactions will not be set aside unless it can be done without harm to the innocent party against whom the relief is sought.

This for the obvious reason that to grant rescission in such a case would be to do something that equity never does: "a court of equity will not transfer a loss that has already fallen upon one innocent party to another party equally innocent." (*Holly v. Missionary Society,* 180 U. S. 284, 295)

A fortiori, in cases like this one, where the bargain was fair, and plaintiff has suffered no injury whatever, equity will not annul an executed transaction where to do so would inflict great and irreparable harm.

A leading case is *Grimes v. Sanders,* 93 U. S. 55, 62, where, in considering whether a conveyance should be rescinded at the suit of the buyer on the ground of a mistake of fact, the court said, speaking of rescission generally,

> "A court of equity is always reluctant to rescind, unless the parties can be put back in

statu quo. If this cannot be done, it will give such relief only where the clearest and strongest equity imperatively demands it. Here the appellant received the money paid on the contract in entire good faith. He parted with it before he was aware of the claim of the appellees, and cannot conveniently restore it. * * * Times have since changed. There is less demand for such property, and it has fallen largely in market value. Under the circumstances, the loss ought not to be borne by the appellant."

Mr. Pomeroy states the principle thus:

> "In case of fraud, if the defendant's act has prevented a complete restoration of the status quo, he cannot, in justice, urge this fact as a defense to the rescission; but in other cases, such as mistake, it would seem reasonable that the status quo should be completely restored as a condition of equitable relief." (5 *Pomeroy, Eq. Jurisp.* (2d Ed.) §2110)

In *Price v. Berrington,* 3 Mac. & G. 486, the principle is applied in a case much less obvious than the present one. There the court refused to set aside an incompetent's conveyance where,

> "* * * the consideration being fair, there being no notice of insanity and no circumstance of fraud, the estate having also been enjoyed during the twenty-seven years since the conveyance, and made the subject of family arrangements by settlement upon the marriage of the daughter of Moggridge [the grantee], under which her children are entitled to the benefit of certain charges upon the estate. * * *

> "The purchaser, having acted *bona fide*, dealt with the estate, believing it to be his own, made important family arrangements upon that footing, the disturbance of which would, I think, be not only highly inconvenient, but unjust."

Illustrations could be multiplied, but the following will suffice:

> *Yauger v. Skinner*, 14 N. J. Eq. 389, *supra*;
> *Riggan v. Green*, 80 N. C. 236;
> *Rickman v. Houck*, 192 Ia. 340.

We turn, therefore, to what was done in the present case.

POINT III.

THE COURT BELOW HAS WHOLLY MISCONCEIVED THE RULE CONCERNING STATUS QUO.

Although the court below declared that status quo should be restored, it held that all that was necessary in this behalf was to return to Waialua the price it paid for the land, plus compensation, on quasi contract principles, for the value to the grantor, "the true owner" (R. 1617), of Waialua's physical improvements. It said, in this connection, that restoring the status quo,

> "does not mean that the court should balance all the equities of the parties, as was done by the trial court." (R. 1600)
>
> "It is no legal hardship on the party dealing with the incompetent if he receives back what he gave in the bargain." (R. 1603)

"* * * the status quo of the company may be and was restored by the decree by setting off the $30,000 purchase price, which the company paid, together with interest, against the accrued rentals to which the ward was entitled". (R. 1606)

On rehearing the court attempted to explain its position on the question of restoring status quo, as follows:

"We used the term 'status quo' in the sense that it meant restoration of what was received under the contract. * * * We believe that such meaning is correct, because the transaction against which relief is granted consists of two things, that is, each party has delivered money or property to the other. The relief returns to each party what he delivered in the transaction. In case one of the parties has by the addition of improvements increased the value of the thing which he must return, then the court may under certain circumstances, grant an allowance to such party for the increase. In a broad sense, the status quo includes both the consideration receeived and allowance for improvements. * * * However, we treated status quo as restoration of the consideration, and the allowance for improvements as a separate condition. The result is the same whether they be viewed singly or together." (R. 1635-1636)

Thus the court wholly fails to see that return of the price plus compensation for the value of improvements made innocently on "another's land" (R. 1617), does not even touch the question properly to be considered, namely, Can the innocent grantee be re-

stored substantially to the condition in which he was prior to the purchase?

1. The court below repudiates the idea that any account should be taken of Waialua's irrevocable change of position.

The Supreme Court of Hawaii attempted "an equitable restoration to status quo" (R. 580) by insuring to the grantee the use of the improvements on the Holt lands, on the theory that this would restore Waialua to status quo with respect to the improvements both on and off the Holt lands, speaking as follows:

> "These provisions * * * are intended to assure the W. A. Co. restoration now, in this suit, to it of the improvements which it has constructed and is maintaining on the Holt lands as well as the continued use and benefit of those which it has constructed off of the Holt lands." (R. 588)

This obviously does not even approximately restore Waialua to status quo; but even this limited and unsuccessful attempt to save Waialua from the irreparable harm that will result if the instruments are annulled, was flatly repudiated by the court below.

After referring (R. 1616) to this action by the Supreme Court, the court below said that this was incorrect; that in such cases the grantee is entitled only to receive compensation to the extent that the "true owner" of the land is enriched by physical improvements. (R. 1617) In other words, the effect of the decree on the grantee is irrelevant.

2. The court below refused even to consider the question whether status quo can be restored.

The court below held that status quo could be restored, because the Supreme Court of Hawaii had so found, "because we cannot say there was clear error, since the evidence was at most only conflicting" (R. 1606). It made no examination of the question itself, but merely accepted the declaration of the Supreme Court, which it treated as a finding of fact, when it was a pure question of law, there being no dispute as to the facts themselves. By thus adopting without discussion or examination the conclusion of the Hawaiian court, the court below not only misapplied the law, but deprived Waialua of the review which it was the right and duty of the court below to give.

And as we have just seen, the court below, having relied on the Supreme Court's declaration that status quo could be restored, utterly ignored the basis upon which that court had made its declaration.

POINT IV.

WAIALUA CANNOT BE RESTORED TO STATUS QUO. THE INSTRUMENTS, THEREFORE, SHOULD NOT BE CANCELLED.

Even if the grantor had been prejudiced by the transactions here sought to be annulled, we submit that, (intervening events having made it wholly impossible to restore status quo), those transactions should not be disturbed.

A fortiori they should not be disturbed where, as here, the transactions assailed were fair and for adequate consideration.

1. The land has been incorporated as an integral part of the plantation, it has greatly increased in value, large sums have been expended on the land, and large sums off the land. Obviously status quo cannot be restored.

We now state as briefly as possible the essential facts showing how irrevocably Waialua has changed its position in reliance on its title.

As to deed of 1910.

1. Relying on its title Waialua incorporated the land as an integral part of its unified plantation. As shown on the attached map, the land lies as a wedge in the heart of the plantation and divides it into two almost equal parts. All improvements on the plantation are located without reference to the boundary of the Holt land, and the whole is operated as a unit. (R. 1494, 578)

2. More than $1,000,000 was expended on improvements: $630,722 on the land (R. 1507), and $504,652 off the land but used in connection with it. (R. 1515) The Supreme Court referred to some of these as follows:

> "* * * large and costly improvements had been constructed by the W. A. Co., in reliance on the deed of 1910, on lands other than Holt estate lands. More specifically * * * reconstruction in 1921 by the W. A. Co. of the

Wahiawa dam and the creation thereby of a reservoir extending back into the mountains for a distance of several miles along both the north and the south forks of the Kaukonahua stream and covering about 300 acres, the reconstruction in 1931 costing the company the sum of about $210,000, [and] the construction of a ditch more than four miles in length to lead the waters from the Wahiawa dam to the cane lands of the W. A. Co., including lands of the Holt estate as well as other lands of the company, [also] the establishment of the Poamoho pump by the W. A. Co. on grant 235 belonging to the Holts but with ditches and pipe lines (on non-Holt lands) through which the water raised by the Poamoho pump was forced and carried to cane fields both on and off the Holt lands." (R. 578)

For example the Poamoho pump was built on the Holt land in 1927 at a cost of more than $200,000. (R. 1550) Half its output is used off the Holt lands. (R. 1500) The Wahiawa extension ditch crosses the Holt lands, and carries water to lands lying to the north. The railroads, ditches, telephone and power lines cross and re-cross its boundaries. Reservoirs lay partly in and partly across its outer lines. The improvements include:

82 houses (R. 1530);
Ditches, pumps, wells, siphons and waterways;
11 reservoirs;
9.75 miles of railroad (R. 1533);
20 miles of roads (R. 1547);
4½ miles of electric power lines (R. 1548).

As to the lease of 1905.[1]

1. When this lease was made the land was a barren uncultivated waste, with the taxes delinquent for four years. (R. 557) More than $43,000 was spent in clearing it and it was three years before the first crop could be gathered on half the cultivated area. (R. 991)

2. The term was for 25 years. The lease would not have been made for less than 25 years or unless all the parties joined. (R. 1485)

3. By virtue of the lease, Mrs. Christian was able to secure an agreement of support from her cousin, which assured her of support for years when she had no other source of income. (R. 571)

4. The term of the lease (25 years) expired in 1930. It is sought to set it aside after its term has expired and after it has been fully performed.

2. Waialua purchased a contingent interest; for twelve years it bore the risk attending ownership of a contingent interest; the fee has vested; status quo cannot be restored.

The deed of 1910 conveyed a contingent undivided one-third interest. The interest was contingent absolutely on the grantor's surviving her father; and was

---

(1) The lease made in 1905 for 25 years, covered the same land as the deed. When the Supreme Court cancelled the deed it held that Waialua was entitled to hold by virtue of its lease, unless the lease were also to be cancelled. (R. 314) It held, however, that the lease should not be cancelled, even though Mrs. Christian were incompetent. (R. 558, 560)

contingent in amount upon her surviving him as his sole heir.

The father died in 1922, and therefore this risk and this contingency continued for 12 years. Every expenditure by Waialua on the property during this period ($203,513.42) was made on this risk as was also every enlargement or improvement of the balance of the plantation. It was not alone the $30,000 payment which was at hazard, it was every act and every expenditure made by Waialua after the deed and in reliance on it.

If an incompetent purchased an annuity on his own life for a lump sum and died after receiving one annual payment, would status quo be restored by the return of the lump sum paid for the annuity less the annual payment? Pollock, C. B. said no in *Molton v. Camroux*, 2 Ex. 487; 4 Ex. 17.

In *Mutual Life Insurance Co. v. Smith*, 184 Fed. 1, the court held an insurance company could not be restored to status quo after it had sold an annuity policy, by the cancellation thereof.

And in *Williams v. Penn Mutual Ins. Co.*, 6 Fed.(2) 322 (affirmed 27 Fed.(2) 1, certiorari denied 278 U. S. 638) the court held that "Where a defendant has foregone or lost a right to which he cannot be restored on the cancellation of an agreement procured by fraud, a court of equity will not decree cancellation", and refused to cancel a life insurance settlement agreement alleged to have been procured by fraud, because the year during which the insurance company was entitled to contest the policy had ex-

pired, and the policy had become incontestable by the insurance company.

See also *Breed v. Judd*, 1 Gray. 455.

Having purchased this contingent interest in 1910, and suffered the risk for twelve years, it is apparent that the bargain is not undone and the parties restored to status quo by requiring, as the court below did, that the grantee upon the return of its purchase price, surrender a title in fee.

The court below has "annulled" the transaction by requiring Waialua to "return" much more than it received (a fee in place of a contingent remainder) and it is given back much less than it parted with.

3. The intervention of many active years shows of itself that status quo cannot be restored.

Quite apart, therefore, from the foregoing matters, the fundamental fact is that during the eighteen years that intervened between the delivery of the deed and the commencement of this suit, the grantee was engaged continuously in the development of a large and highly organized and equipped plantation, of which the lands in suit are an inseparable part. It is apparent that countless decisions have been made, countless steps taken once and for all, which would have been very different except for the grantee's justified belief that the transactions now attacked were unassailable.

Quite apart, therefore, from the central fact of the intricate and inseparable relation which the land in suit has come to have physically to the grantee's other property and affairs, the effect of divesting

the grantee's title will be this: that innumerable things that were done wisely and well should have been done differently, or not at all. The grantee will thus be injured in a thousand undiscoverable (but unquestionable) ways in addition to the great and obvious injuries which appear on the face of the physical facts.

Moreover, changes in external conditions have occurred by virtue of which the setting aside of these instruments would effect grave injustice. The land has increased in value, both from the efforts and expenditures of the grantee and from other causes, described by the Supreme Court in general terms as "more profitable development of the sugar industry, a larger and more competitive market and the acquisition * * * of the fee simple estate." (R. 294)

The difficult problem of obtaining the great quantities of water necessary in the cultivation of sugar (R. 1457, 1461) was not solved for many years (R. 1496, 1505, 1507). The development of caterpillar tractors, motor trucks, and many other devices has materially changed the nature of the industry (R. 1386), as have the discovery of new fertilizers (R. 1385-7), and new methods of controlling pests (R. 1257). And as pointed out by the Supreme Court, in 1906,

> "* * it was not known to any of the parties or to any one else, that pineapples could be successfully or profitably grown on the upper lands of the Holt Estate. It was not until about fifteen years later that the W. A. Co. was able to lease the upper lands for pineapple purposes * * * * *." (R. 559),

i. e., not until 1923 (R. 973).

The fact is, therefore, that the property now sought to be taken from the grantee simply is not the same property as that received by it in 1910. Indeed, taking account of all that has occurred in the interim, it bears almost no resemblance to the property received, either physically or functionally.

POINT V.

SOLICITUDE FOR INCOMPETENT PERSONS DOES NOT JUSTIFY INJURY TO THOSE WHO DEAL WITH THEM IN GOOD FAITH.

There is no reason, either in law or in public policy, why the mere fact of incompetence should cause the setting aside of an executed transaction with an innocent grantee. Granted that an incompetent should be given the fullest protection against overreaching—there is no sound reason why, in those cases where the incompetence has not been a factor in the transaction, the transaction should be set aside to the injury of an innocent grantee. The mere fact of incompetence should not entitle a grantor to a more favorable position than a competent person; it should not entitle the incompetent grantor who has made as fair a bargain as could the most skillful and able (one joined in by relatives, as was the case here) to set it aside years after, merely because the land has increased in value.

As pointed out by Judge Story (*Equity Jurisprudence*, 13th Ed. §227):

> "The ground upon which Courts of Equity now interfere to set aside the contracts and other acts, however solemn, of persons who are idiots, luna-

ties and otherwise non compotes mentis, is fraud."

1. Incompetents are adequately protected by other means.

It is, of course, a fact that other adequate means are provided in the law for the conservation of the property of incompetent persons. As was said in *Coburn v. Raymond*, 76 Conn. 484:

"The argument under review also forgets the provisions which are made by statute for the protection of the property interests of incapable persons and the prompt redress of their wrongs. It is made easy to put such persons beyond the power of contracting or disposing of their estate, and to provide a competent substitute to secure redress when occasion arises. It may be safely assumed that the friendly or selfish interests of friends or relatives will, in the presence of so simple a recourse, leave few incapable persons possessed of estate free to dissipate it, or, in the event of a wasteful bargain or disposition by one whose power has not been legally restrained, that such interests will prompt speedy action which will lead to an intelligent conservation of the incompetent's interests before delay has witnessed the dissipation of the consideration received, or permitted substantial changes in the status of the bona fide grantee."

2. Persons dealing in good faith with incompetents have an equal claim on the court's concern.

The proposition stated is, we submit, self-evident. As was said in *Coburn v. Raymond*, 76 Conn. 484.

> "When the case involves an innocent, bona fi
> grantee, the court has before it two innocen
> parties between whom it is in duty bound to d
> equity to the best of its ability. It has no righ
> to shut its ears to the claims of either party . . .
> if, on the whole case, it would be inequitable t
> set aside a conveyance, there is no inexorable rul
> that it must be done because, perchance, th
> grantor was deficient in mental capacity."

And in *Edwards v. Miller* (1924), 102 Okla. 189, it is said:

> "If the lunatic and his relatives and friends and those upon whom rests the moral or legal duty to protect him in his unfortunate mental condition fail to have his mental incapacity judicially determined so that others may learn of his condition, and the mental condition and appearance of the lunatic is such that he causes even the cautious and prudent individual with whom he deals to believe in good faith that he is a fully competent person, then simple justice demands that innocent third persons be not made to suffer and lose moneys actually paid out by them in good faith in carrying into effect the contracts made by them with such lunatic whose mental condition and actions made him appear to them to be a fully competent individual."

POINT VI.

THE DOCTRINES ANNOUNCED BY THE COURT BELOW HAVE NUMEROUS UNDESIRABLE CONSEQUENCES.

The rule announced by the Circuit Court of Appeals, that the deed of an incompetent is always and

f necessity void, leads inevitably to consequences hat are wholly bad.

The incompetent will be deprived of the protection given by the voidable rule.

If an incompetent's contract is void, then it cannot e ratified (*Oakley v. Shelley*, 129 Ala. 467, 470; *Restatement of Contracts*, Sec. 13); it is subject to collateral attack (*Luhrs v. Hancock*, 181 U. S. 567, 574; *Sothern v. United States*, 12 F.(2d) 936); and it can be repudiated by the competent party. (*Sothern v. United States*, supra; *Luhrs v. Hancock*, supra.)

The situation is summed up by Williston (1 *Williston on Contracts*, Revised Edition 740):

> "Thus: If the contracts of lunatics are void, they cannot be ratified: third persons may effectually deny the title of the insane person's grantee: and a sane party to a bargain with a lunatic may repudiate it although the lunatic has performed on his side, or is ready to perform."

A bona fide purchaser from the grantee would get nothing; the stability of land titles would be greatly impaired.

If such deeds are void, even when given for value to an innocent purchaser, then necessarily a bona fide purchaser from the incompetent's grantee gets nothing. The effect on land titles generally of such a rule would be appalling. As was said in *Goldberg v. McCord*, 251 N. Y. 28:

> "Such a holding would be most disastrous to real estate titles and make the sale of real property extremely difficult and uncertain."

And in *Odom v. Riddick*, 104 N. C. 515, the court forcefully pointed out the result that would follow if a bona fide purchaser from the incompetent's grantee were not protected:

> "Any other doctrine would place all titles upon the hazard. If the title of an innocent purchaser for value, and without notice, can be upset for the alleged mental incapacity of one grantor, it can be done though the grantor may have been a very remote one. The evidence must necessarily be sought among those friendly to the heirs of such grantor,—the neighbors and acquaintances of the party of the alleged incapacity; and it would be difficult for the grantee in possession to furnish proof of the sanity of every grantor through whom he claims. Every man who shows the abnormal condition of mind which incapacitates him to make a conveyance of his property is sure to attract the attention of those around him, who have the power, and sometimes exercise it, to conceal the fact. It is a safer rule to require his heirs, or those acting for them, to take prompt steps to have the deed set aside, and parties placed in statu quo, before the property is conveyed to other parties, and while the facts are capable of full investigation, than to subject a remote grantee to maintain the integrity of his title by rebutting allegations of incapacity in any one of a long line of grantors."

This void rule will render uncertain every land title in Hawaii. None will be certain or secure during the lifetime of any grantor, and the uncertainty will continue even after the death of grantors, due to the sur-

ival of causes of action. Owners of land as well as ubsequent purchasers can only look to the future ith apprehension lest their grantor, his personal epresentative, or some grantor in the chain of title, r his guardian or personal representative, come forward with a claim of mental incompetence.

3. The incompetent could recover in ejectment, without restoring the purchase price.

The incompetent grantor or his representative or successor can, if the deed is void, recover possession in an action in ejectment, regardless of the innocence of the grantee, or of irrevocable changes of position suffered by him in reliance on his title, and without restoration even of the purchase price.

This necessarily follows from the reasoning in support of this Court's decision in *Dexter v. Hall*, 15 Wall. 9, where, indeed, this court cited with approval and relied on (p. 25) an early Pennsylvania case, *Rodgers v. Walker*, 6 Pa. St. 371, pointing out that in the *Rodgers* case it was held that the grantee of an incompetent "had no equity to be reimbursed his purchase-money, or the cost of improvements," because the deed was "absolutely void". See also *Young v. Bradley*, 101 U. S. 782.

CONCLUSION.

We are dealing here with a question which affects the security of every land title. It is contended that an inflexible rule makes transactions entered into in good faith by innocent parties void; this by the mechanical

application of a metaphysical rule. We submit that rules of law should be formulated with greater consideration of their practical results.

In this case, this court is afforded the opportunity to make an authoritative declaration on an important principle of law: one that touches transactions in general: one as to which there presently exists uncertainty and confusion in the Federal courts.

It is submitted that the writ of certiorari should be granted, the decree of the court below reversed, and the bill dismissed.

Respectfully submitted,

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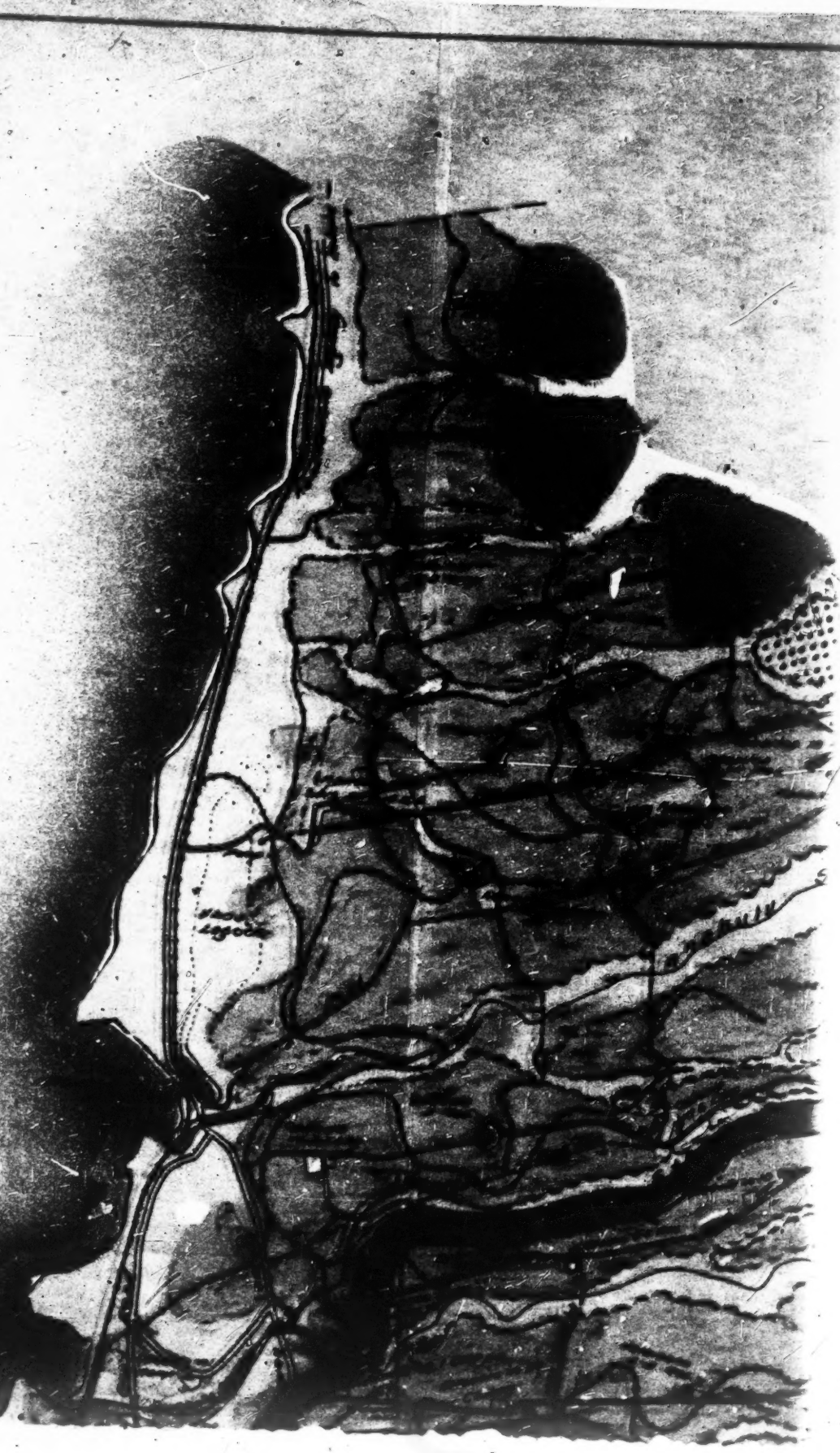
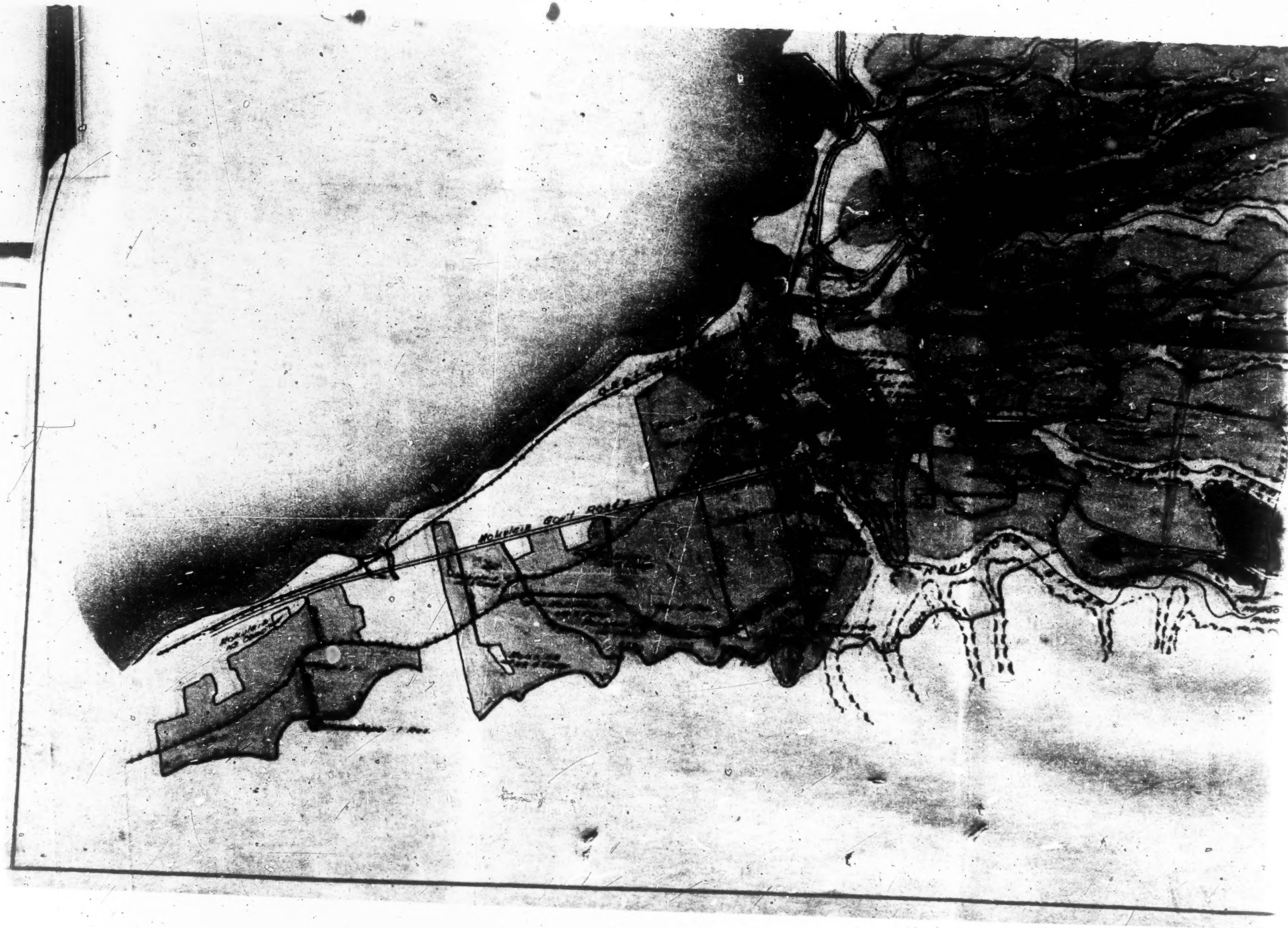
MAP OF
WAIALUA AGRICULTURAL CO., LTD. PLANTATION
WAIALUA, OAHU. T.H.

Feb. 1. 1932.

Scale : 1 inch = 2500 ft.

Compiled and reduced from map of W.A.Co.Ltd. Plantation dated 1902.
Scale 1" = 1000' J.G. Duarte - Surveyor
By C.H. Bischoff - Surveyor, W.A.Co.Ltd.





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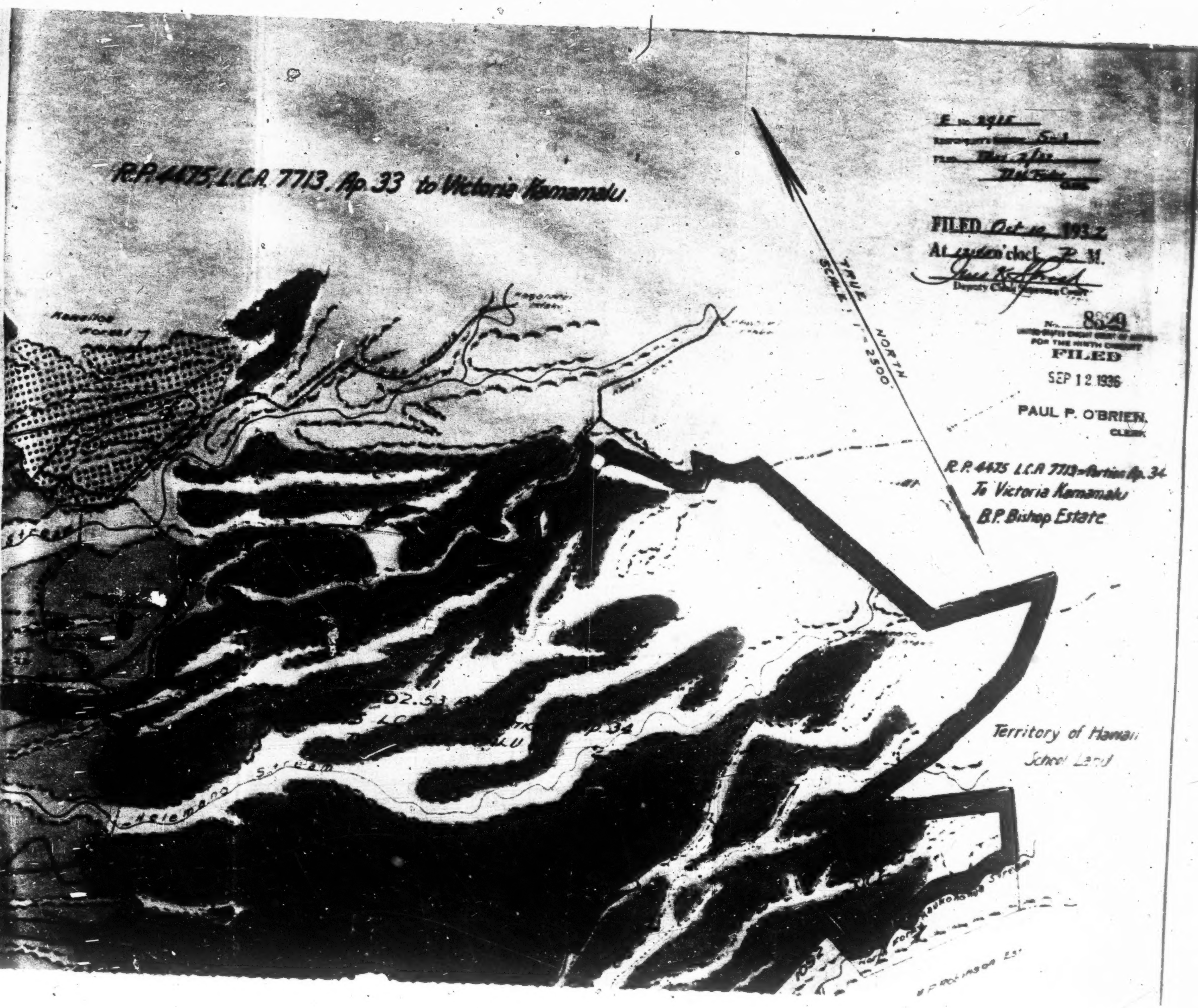
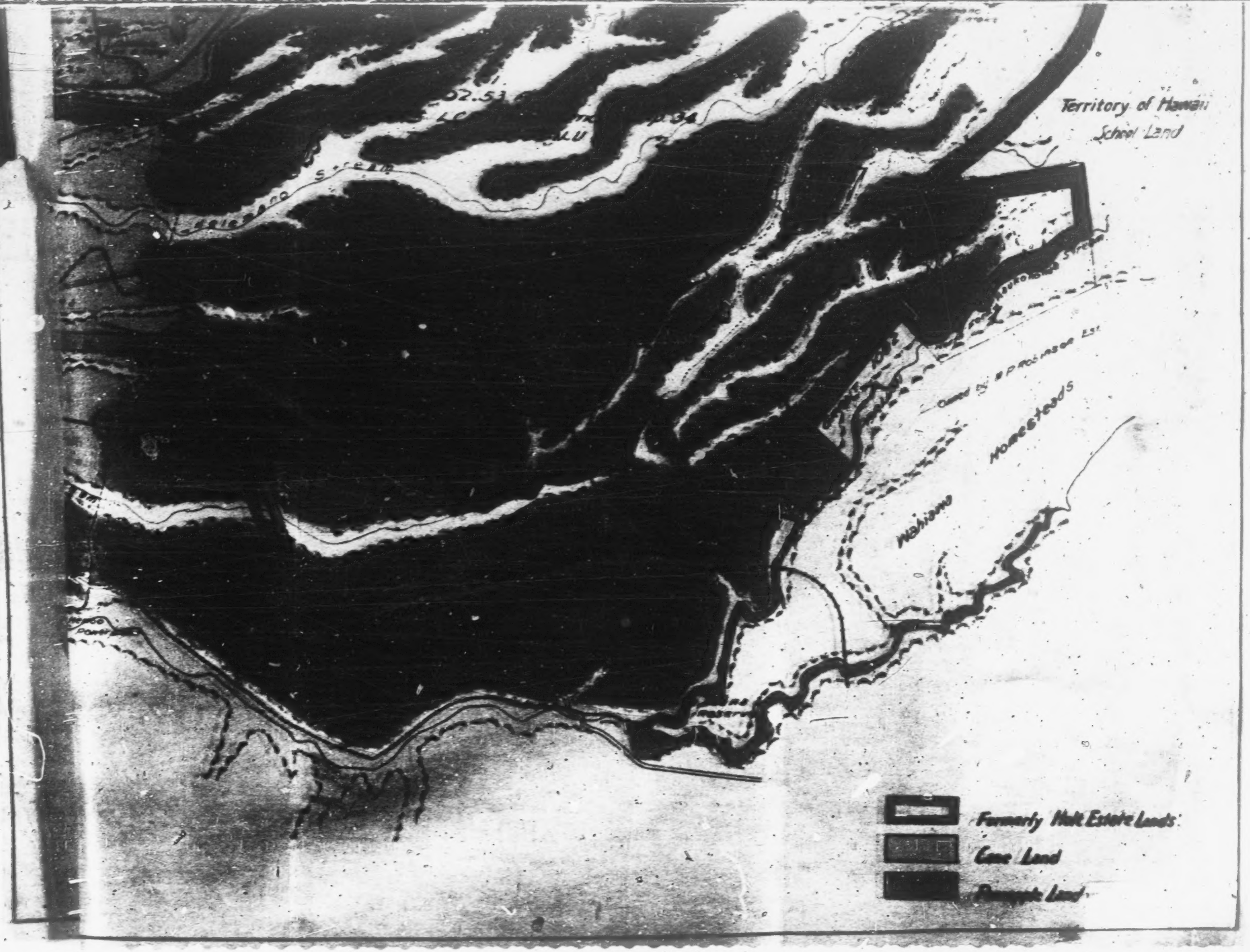

R.P. 4475, L.C.A. 7713, Ap. 33 to Victoria Kamamalu.
TRUE NORTH
SCALE 1" = 2500'
FILED Oct 10 1932
At o'clock P. M.
Deputy Clerk Supreme Court
No. 8329
FOR THE NINTH CIRCUIT
FILED
SEP 12 1936
PAUL P. O'BRIEN,
CLERK
R.P. 4475 L.C.A. 7713 = Portion Ap. 34
To Victoria Kamamalu
B.P. Bishop Estate
Territory of Hawaii
School Land
Helemano Stream


Territory of Hawaii
School Land
Formerly Holt Estate Lands:
Cane Land
Pineapple Land